

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Protecting the Privacy of Customers of)	WC Docket No. 16-106
Broadband and Other)	
Telecommunications Services)	
)	

COMMENTS OF TECHNET

TechNet hereby submits its comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding (“NPRM”).¹

TechNet is the nation’s preeminent, bipartisan network of innovation economy CEOs and senior executives. Our diverse membership includes the nation’s leading technology companies in the fields of information technology, e-commerce, advanced energy, biotechnology, venture capital, and finance. The members of our network understand that for the Internet ecosystem to thrive, all parts must work in tandem. This is why, since its inception, TechNet has championed policies that foster a climate for innovation and competition.

TechNet believes consumers’ reasonable expectations of privacy should be met when they engage in online activity and offline activity alike. However, we also understand that consumers often do not appreciate that there are a multitude of entities that participate in the online ecosystem, often in a single interaction.

We endorse the FCC’s stated goals of transparency, choice, and security. Both the FTC and the FCC recognize the importance of consumer notice of privacy practices

¹ Notice of Proposed Rulemaking, WC Docket No. 16-106, FCC 16-39 (rel. Apr. 1, 2016) (“NPRM”).

and the collection of sensitive data for marketing and third party sharing. However, the details of the FCC's proposal may be counterproductive in achieving these goals, while also hindering innovation. As the FCC considers its proposed privacy rules, we encourage it to create rules that provide a consistent consumer experience. We also encourage the FCC to work together with the FTC to achieve these goals.

Many of TechNet's members have long served customers while being regulated under the FTC's jurisdiction. This experience has led them to build practices around the agency's cumulative privacy and data security advice, including the framework set forth in the 2012 Privacy Report.² That framework advanced the principles of privacy-by-design, choice, and transparency, and has supported FTC enforcement actions that have held online companies responsible for their actions.³ The FTC recognized the potential harm to consumers resulting from online data collection and use, but then weighed those harms and balanced them with the benefits of such practices, which included better service and innovative products.⁴ While the FTC recognized certain consumer "norms," it was also aware that privacy is often subjective.⁵ The FTC framework understands that some consumers might find certain data more or less sensitive than others and, as such, ensured that any data used outside of the context in which it was collected was subject to

² Protecting Consumer Privacy in an Era of Rapid Change – Recommendations for Businesses and Policymakers, FTC Report, (Mar. 2012) (the "2012 Privacy Report," the "FTC Report" or the "Privacy Report"), *available at* <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>.

³ *Id.* at i; *see also* Enforcing Privacy Promises, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/enforcing-privacy-promises>, (noting that "the FTC can and does take law enforcement action to make sure that companies live up [to] these promises").

⁴ FTC Report at 36.

⁵ *See Id.* at 60.

a choice mechanism appropriate to the data's level of sensitivity. Therefore, only truly "sensitive" data was subject to a consumer's opt-in consent.⁶

The FTC's final framework yielded a balanced approach that, when implemented fully, gave consumers the protection they needed and offered businesses the opportunity to compete and innovate in the growing online marketplace. Despite the rapid changes in technology and the Internet over the past four years, the FTC's approach has been flexible enough to accommodate these developments while continuing to provide strong consumer protection and a basis for regulatory enforcement.

In the past, TechNet endorsed the administration's commitment to privacy, and agreed that "keeping consumer data safe and secure while providing tools for individuals to control the use of that data is critical."⁷ However, we have cautioned "any regulations need to be carefully considered so they do not hamper innovation with overly prescriptive or burdensome rules" and committed to working with the administration to "strike the right balance."⁸

The FCC proposal could upset that balanced approach and adversely affect consumers. For example, the rules would require broadband providers to (1) provide consumers "opt-out" choice with respect to very limited activities that consist of marketing a "communications-related service"⁹ and (2) obtain opt-in consent for the use

⁶ See *Id.* at 57-60.

⁷ *TechNet Statement on White House Online Privacy Draft*, TechNet – The Voice of the Innovation Economy (Feb. 27, 2015), available at <http://www.technet.org/technet-statement-on-white-house-online-privacy-draft/>.

⁸ *Id.*

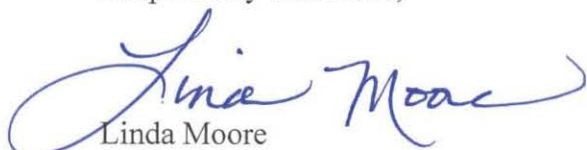
⁹ NPRM at ¶ 221.

of a very broad range of information that has never been considered “sensitive” in other contexts.¹⁰

Similarly, the FCC’s breach notification requirements could create an entirely new and unprecedented standard for consumer reporting. The proposal’s broad definition of “consumer proprietary information” could lead to over-reporting of incidents that may not pose threats to the consumer and may lead to either consumer confusion or desensitization. TechNet has and will endorse the advancement of legislation that provides for a single, functional national data breach standard. While the FCC cannot advance that standard here, the agency can look to other harm-based statutes and reporting requirements to achieve a more consistent approach.

The issue of how to regulate privacy in the broadband environment is complex, particularly given the subjective nature of the issue and the interrelation with other frameworks and regimes. TechNet encourages the FCC to carefully review its proposal to get this framework right. We also encourage the FCC to work closely with the FTC to find common ground on privacy principles so that consumers can receive consistent protections across the entire broadband and online ecosystem.

Respectfully submitted,



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¹⁰ NPRM at ¶ 136; *see also*, FTC Report at 47 (limiting sensitive data to information about children, financial and health information, Social Security numbers, and precise geolocation data).